# Request for Proposal RFP# 2008-GF-0016



# Develop and Operate a Restaurant/Concession at Douglas Municipal Golf Course

City of Douglas, Arizona

Bid Date: August 20, 2008

Bid Closing: 4:00 P.M.

### **Bid Notice**

**NOTICE IS HEREBY GIVEN** that the Mayor and Common Council of the City of Douglas will receive sealed Bid Proposals until Four O'clock p.m. (4:00 p.m.) on the 20th day of August, 2008 for the following:

## Develop and Operate a Restaurant/Concession at Douglas Municipal Golf Course

Specifications are on file and may be obtained at the office of Purchasing Agent, 425 10<sup>th</sup> Street, Douglas, Arizona. Bids will be received until the above hour specified and will be opened and publicly declared on said date and time at a Bid Opening to be conducted by the Purchasing Agent in the Council Chambers. Address all Bids to City of Douglas, City Clerk, Brenda Aguilar, 425 10<sup>th</sup> St., Douglas, Arizona 85607, specifying on the outside wrapper the nature of the Bid and reference RFP# 2008-GF-0016. The Council reserves the right to reject any Bid, defer action on Bids and to waive any informalities thereof.

Dated at Douglas, Arizona this July 28, 2008

Brenda Aguilar

City Clerk

City of Douglas

### SECTION I: BACKGROUND AND GENERAL INFORMATION

### A. PURPOSE

The City of Douglas ("City") is issuing this Request For Proposal ("RFP") for qualified parties ("Responders", "Respondents") interested in providing Restaurant/ Concession operation which is open to the public and is in no way a private club, and management services, and occupying space to support these services at the Douglas Municipal Golf Course Club House ("Club House").

### **B. PRE-PROPOSAL CONFERENCE**

A pre-proposal conference is scheduled as follows: **Date and Time: Monday August 4, 2008 at 4:00 PM** 

City of Douglas Council Chambers 425 10<sup>th</sup> Street Douglas, AZ 85607

This is a pre-proposal meeting. The City of Douglas will have in attendance key personnel to answer questions or discuss issues that may arise regarding the Develop, and Operate a Restaurant/Concession at Douglas Municipal Golf Course.

The City of Douglas Requests that all questions be prepared prior to the pre-proposal conference and a copy of such questions be submitted to: City of Douglas, Recreation & Golf Division, ATTN: David Cota, 425 10<sup>th</sup> Street, Douglas, AZ 85607 or by email to: <a href="David.Cota@douglasaz.gov">David.Cota@douglasaz.gov</a> 2 days before the day of the pre-proposal conference; however, oral questions may be accepted at the meeting and a written response to all questions will be posted, within one week following the meeting.

The City of Douglas encourages all potential Offeror's who plan on attending this pre-proposal conference to RSVP to David Cota at (520) 364-2496, or by email to <a href="mailto:David.Cota@douglasaz.gov">David.Cota@douglasaz.gov</a>, so that we may keep you informed of any changes to this meeting should they become necessary.

### C. CLUB HOUSE LOCATION

The Club House is located at the Douglas Municipal Golf Course, 1372 E. Fairway Dr., Douglas AZ 85607. The Club House is owned by the City of Douglas provides Golf and Family Golfing services to the residents of Douglas Arizona

### D. CLUB HOUSE INVENTORY (Subject to Change)

Current inventory reflects:

- 1. Large counter bar area
- 2. Two door refrigerator
- 3. Large Floor Fryer
- 4. Large table top fryer
- 5. Large Freezer
- 6. 3 compartment sink
- 7. Ice cream maker
- 8. Cooke oven
- 9. Industrial stove/oven

### **SECTION II: TERMINAL RESTAURANT SERVICES**

### A. REQUIRED SERVICES

It is intended that the prospective restaurant operator will:

- 1) Offer lunch and dinner dining services at a minimum. Breakfast service is encouraged.
- 2) Supply catering for private functions and special events held in the Multipurpose room or on other areas of the Golf Course.
- 3) Provide at all times snack foods, including but not limited to candies, chips, nuts, soft drinks, beef jerky and associated snack products.
- 4) The Concessionaire will provide alcohol related products at the Club House facilities as part of the sit-down meal service and as an bar/lounge set-up in conjunction with the main restaurant. The City of Douglas will allow the Concessionaire use of a Series 5 Government Liquor License for the Clubhouse and surrounding golf course facilities during the term of the Concessionaire agreement.

### **B. HOURS OF OPERATION**

Please submit your hours of operation. City of Douglas may award the RFP to the Respondent with a more operational schedule.

### **SECTION III: PREMISES**

The Club House will be dedicated to the restaurant and lounge operations.

### A. CONCESSION FACILITIES

The interior space will contain space for dining, kitchen, lobby, lounge and Restroom space.

Included in this space is a multipurpose room which is to be used for the dining experience, and may also be rented out for private parties by the Concessionaire, with use of proper notice that will not conflict with business hours. Notice shall be given to those renting the facility that the rental agreement will include a provision that the party using the restaurant/concession facility must employ/engage Lessee as the main caterer.

Some exterior space may be covered, and uncovered exterior patios on the North and West sides of the building and can be used for outdoor seating.

### **B. COMPENSATION**

### 1.) Base Compensation

The base compensation to be paid by the Concessionaire to the City is \$\\_\_1,800.00\_\_\text{per month} over the initial two (2) year term. An additional negotiable monthly Capital Depreciation fee will be added for prospective Clubhouse improvements. Said improvements to kitchen dining, and bathrooms to be performed by the City in dialogue with Concessionaire.

### C. MAINTENANCE RESPONSIBILITIES

The Concessionaire will be responsible for the regular maintenance and upkeep of the facilities. This includes maintaining of the Furniture, Fixtures & Equipment the general appearance and cleaning of the area, including the restrooms, multipurpose room, patios, bar, and kitchen. The City will be responsible for maintaining the infrastructure to include plumbing, HVAC, wiring and electrical, roof, window panes, foundation of the Premises, exterior of the building, and any public exterior spaces.

#### D. UTILITIES

The Concessionaire shall be responsible for the following utilities to include but not limited to, electrical, telephone, water, sewer, grease (removal & disposal), waste disposal, cable, any satellite systems.

### E. ADJUSTMENT OF CONCESSION FACILITIES

The City reserves the right to adjust the facilities allowed for use by the concessionaire. In such instances, if compensation is based on the area being allowed for use by the concessionaire, then the compensation will be adjusted in direct proportion to the area adjustment.

### **SECTION IV: SCOPE**

### A. MINIMUM QUALIFICATIONS

To be eligible for consideration for this RFP, the Responder must meet the following minimum qualifications.

- 1. A minimum of three years prior experience in the operation/management of a Restaurant/concession operator, with catering experience.
- 2. Financial capability to outfit, equip and operate the restaurant.
- 3. Concessionaire shall be fully advised and aware of any and all laws, rules, and regulations relating to the purchase, handling, inventory, control, sale and service of spirituous liquors. All employees of the concessionaire shall have basic liquor training provided by a trainer approved by the Arizona Department of Liquor Licenses and Control, as well as all managers of the Concessionaire shall have basic and management training from a like trainer.

### **B. TERM OF AGREEMENT**

City proposes an initial two (2) year Concession term. However, consideration will be given to requests for additional renewal term options in three (3) to five (5) year increments to provide for an appropriate amortization period of the cost of the improvements, contingent upon City review of the respondent's proposed level of finish for the restaurant space and the required investment to outfit the facilities. The amortization period will not exceed five (5) years in total. However, if the facility is sold, this agreement will expire.

### C. GENERAL OBLIGATIONS

The successful Responder will be responsible for complying with all terms and conditions contained within a negotiated Concessionaire Agreement (CA) with the City, in addition to all other Local, State and/or Federal rules which may apply. The restaurant/concession operator will be responsible for obtaining and maintaining all required permits, licenses or other like requirements for the operation of a restaurant in the City of Douglas and State of Arizona. The successful Responder must be an active legal entity, licensed to do business in the City of Douglas, Cochise County and the State of Arizona, within fifteen (15) days of an approval of a Concessionaire Agreement by the City Council.

### D. INSURANCE

Prior to the commencement of restaurant operations, the successful respondent will be responsible for acquiring the appropriate insurance coverage as required by the Concessionaire Agreement and generally addressed as follows:

- 1. Commercial General Liability Policy written by a company that is authorized and licensed to conduct business in the State of Arizona and approved by the City.
- 2. Minimum Limits
- A. Bodily Injury and Property Damage Liability
- i. \$1,000,000 per occurrence
- ii. \$2,000,000 aggregate
- B. Workers' Compensation and Employers Liability i. Workers' Compensation: Per State of Arizona Statutory requirements employers Liability: \$100,000 each accident: \$100,000 per employee for Disease and \$500,000 for all diseases.
- C. Fire Legal Liability with limit of \$100,000.
- D. Liquor Liability Insurance with \$1,000,000 minimum limit.
- E. Property Damage Insurance for all risks of loss of Concessionaire owned Contents at the premises.
- 3. All policies must include the City of Douglas, its officers, agents, employees and volunteers as "Additional Insured's" under its policies and must be endorsed to the applicable policy.
- 4. The insurance coverage and limits are set at the sole discretion of the City of Douglas and are subject to change or revision as the need arises.

### **SECTION V: PROPOSAL CONTENTS**

Prospective Respondents are requested to propose providing Club House restaurant/concession operation and management service.

To assure consistency, proposals must conform to the following format:

Cover Letter

**Table of Contents** 

### Sections:

- A. Experience and Capacity of Firm and Qualifications of Personnel
- B. Proposal:
- C. Credit References
- D. Acceptance of Lease Agreement, Specification and Other Requirements
- E. The concessionaire shall provide the City Manager with a comprehensive operations plan outlining the Concessionaire's realistic achievable goals for the coming year its estimated income and overall business plan for the coming year.

### A. EXPERIENCE AND CAPACITY OF FIRM AND QUALIFICATIONS OF PERSONNEL

This section should contain an introduction and the background of your firm, and the ability to finance the service operations. Also demonstrate your Firm's technical expertise in food and beverage service management operations and maintain a High standard of appearance and operation. Include a current list of names of officers of the Corporation.

#### B. PROPOSAL

This section should contain the proposed theme or concept, seating, room and area configurations, and personnel. As well as:

- A. Hours of operation
- B. Services offered
- C. Proposed pricing
- D. Proposed Customer Service Plan
- E. Marketing Plan
- F. Plans to comply with liquor license requirements as outlined herein for the bar/lounge and multipurpose room
  - G. Menu

H. The personnel assigned to the facilities must be sufficiently trained to be able to provide excellent service to the public. Concessionaire shall provide a proposed employee schedule to City Manager or his staff.

### C. CREDIT REFERENCES

This section should contain a Letter of Credit from a Bank or a lending Institution.

### D. ACCEPTANCE OF CONCESSIONAIRE, SPECIFICATION AND OTHER REQUIREMENTS

In this section, list any exceptions taken to the Concessionaire Agreement (see Appendix "A"), specifications or other requirements listed in this RFP. You must reference the RFP section where exception is taken, a description of the exception, and the proposed alternative, if any.

### E. One (1) Year business Plan.

The concessionaire shall provide the City Manager with a comprehensive operations plan outlining the Concessionaire's realistic achievable goals for the current and upcoming year as to the estimated income and overall business plan.

### SECTION VI: PROPOSAL SUBMITTAL

### A. SUBMITTAL PACKAGE

Respondents shall submit one (1) unbound and six (3) bound copies of its proposal.

### **B. DELIVERY**

Proposals shall be delivered in hand or by mail, and marked:

RFP # 2008-GF-0016 RESTAURANT/CONCESSION OPERATORS AT DOUGLAS MUNICIPAL GOLF COURSE

CITY OF DOUGLAS Brenda Aguilar City Clerk 425 10<sup>th</sup> Street Douglas, AZ 85607

### C. SCHEDULE

Issue Request for Proposal	Monday July 28, 2008
Pre Proposal Conference	Monday August 4, 2008
Proposals due on	Wednesday August 20, 2008
Presentation to City Council	Wednesday September 10, 2008
Award RFP	Wednesday September 10, 2008
Concessionaire Agreement Term Starts	As stated by Mayor and Council
-	of effective dates.

### **D. DEADLINE**

Proposals must be submitted to the *City of Douglas Clerk*, *Brenda Aguilar*, 425 10<sup>th</sup> Street, *Douglas Arizona*, 85607, no later than 4:00 P.M., local time, Wednesday August 20, 2008. Proposals received after the specified time and date will **NOT** be considered.

### E. FINALIST

Finalists may be selected from the qualified proposals and shall be notified by mail. The finalists may be required to submit additional details.

### F. CITY RESERVATIONS

The City reserves the right to:

- 1. Modify or otherwise vary the terms and conditions of this RFP at any time, including but not limited to, deadlines for submission, schedules and proposal requirements.
- 2. Waive irregularities in the proposals.
- 3. Reject or refuse any or all proposals, or to cancel and withdraw this RFP at any time.
- 4. Negotiate with any or all Respondents in order to obtain terms most beneficial to the City.
- 5. Accept the proposal(s), which, in the City's sole and absolute discretion, best serves the interests of the City.

### G. CITY CONTACT INFORMATION

13. Questions pertaining to this bid call should be directed to the Purchasing Agent, John Alvarez at 520-805-0242 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Questions involving technical specification shall be directed to David Cota at 520-364-2496.

PLEASE VISIT <u>www.douglasaz.gov</u> FOR NEWS AND INFORMATION ON THIS RFP.

### H. COLLUSION

More than one proposal from the same Respondent under the same or different names will not be considered. Reasonable grounds for believing that a Respondent is submitting on more than one proposal will cause the rejection of all proposals in which the Respondent is involved. Those proposals will be rejected if there is reason for believing that collusion exists among Respondents, and no participant in such collusion will be considered in any future proposals for the operation of a restaurant for the next six months following the date of the Proposal submission.

### I. DISCLAIMER

The estimate of the Concession Facility Space is believed to be reliable; however, Respondents should rely on their own experts for counsel in this regard.

All proposals submitted to the City are subject to public disclosure.

### J. BINDING OFFER

A respondent's submittal shall remain valid for a period of 60 days following the Proposal deadline and will be considered to a binding offer to perform the required services, assuming all terms are satisfactorily negotiated. The submission of a Proposal shall be taken as prima facie evidence that the Respondent has familiarized itself with the contents of this RFP.

### K. REQUESTS FOR INTERPREPATION OR CLARIFICATION

No interpretation or clarification of the RFP will be made by a Respondent orally. If discrepancies or omissions are found by any prospective Respondent or there is doubt as to the true meaning of any part of the RFP, a written request for clarification or interpretation must be submitted in writing, addressed to the

CITY OF DOUGLAS RECREATION & GOLF DIVISION ATTN: David Cota 425 10<sup>th</sup> Street Douglas, AZ 85607

All such interpretations and any supplemental instructions will be in the form of a written addendum which, if issued, will be posted to the RFP website, and it will also be mailed certified.

### L. PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount

### **SECTION VII: SELECTION CRITERIA**

#### A. SELECTION CRITERIA

At a minimum, a proposal should include all those items as specified in Section V of this RFP. Proposals will be evaluated based on the following criteria, ranking in order of importance:

- 1. Respondent's ability to provide the services as listed in Section II of this RFP.
- 2. Credit Reference Letter from a Bank or Financial Institution reflecting your Financial Ability.
- 3. Prior restaurant operation/management experience
- 4. Services provided: menu, meal selection, hours of operation, catering, etc.
- 5. Overall economic return to the City.
- a. Compensation & Fees
- b. Employment generation

### **B. EVALUATION COMMITTEE**

The City will form an evaluation committee to evaluate each proposal based on the criteria above.

The committee will make a final recommendation to the Mayor for consideration and approval

### APPENDIX "A" – CONCESSIONAIRE AGREEMENT

### BASE AGREEMENT SETTING FORTH THE MINIMUM REQUIREMENTS FOR THE PROJECT.

The following document is the base agreement (\_Base Agreement\_) which when combined with Exhibits as defined in the Base Agreement will constitute the agreement between the Offeror and The City.

The City reserves the right to add or modify the terms and conditions at any time prior to the final execution of an agreement. The Offeror will be given the opportunity to take exception to any additional or modified term or condition in the same manner as set forth in the Proposal Requirements.

### **ALCOHOLIC BEVERAGE CONCESSION AGREEMENT**

-	This agreement ("Concession Agreement") is made and entered on thisday of and between the City of Douglas, an Arizona municipal corporation ("City"), and the ("Concessionaire").
	RECITALS
A.	The City owns the golf course and facilities known as the Douglas Golf and Social Club (the "Club") located at 1372 E. Fairway Dr., Douglas AZ 85607. and is the holder of a series 5 governmental liquor license known as (the "License"), which permits the serving of spirituous liquor in the Premises as described in the License Application on file with the Arizona Department of Liquor Licenses and Control ("DLLC").
В.	The parties intend that this Concession Agreement shall include all areas presently described in the License, together with any modifications or additions to such premises (all of which areas are hereinafter referred to as the "Premises" or the "Club").
C.	The City has recently acquired the License as the previous private party operating the Club terminated its tenancy and removed its series 6 license from the premises. The previous arrangement with said private tenant enabled the City to provide the public with efficient and convenient services, which the City wishes to continue and the Concessionaire has agreed to so provide such services on a contract basis under the terms and conditions

herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, it is mutually agreed by and between the parties as follows;

1.	<u>Concession</u> , City hereby agrees that Concessionaire shall provide food and alcoholic beverage services upon the Premises, in accordance with the terms and conditions of this Concession Agreement, under the authority of the City's License.			
2.	Compensation: In consideration of the City providing this business opportunity to the Concessionaire, the Concessionaire agrees to pay the City a monthly concession fee of \$ (The "Fee"). The Fee shall be paid on the first day of each month.			
3.	Operationa	ational Requirements:		
	a.	The Concessionaire shall offer food and alcoholic beverage concession services to the public at all times that a reasonable demand for such services exists in relation to the programming of the Premises as follows:		
		i.	The Concessionaire shall offer food and dining in such a manner consistent with a first class yet casual restaurant serving breakfast, lunch and dinner and al a carte selections.	
		ii.	The Concessionaire shall provide catering for all events held at the Club.	
		iii.	The Concessionaire shall provide at all times snack foods, including but not limited to candies, chips, nuts, soft drinks, beef jerky and associated snack products.	
		iv.	The hours of operation shall be	

- v. Copies of all menus shall be made available to the City for review and approval in the City's reasonable discretion.
- vi. The Club shall offer a full bar including a comprehensive wine list and boutique beers.
- vii. The Concessionaire shall keep the Premises adequately stocked with merchandise, and with sufficient staff to care for the patronage, and to conduct said business of the Club in accordance with sound business practices associated with operations of this nature.
- b. The Concessionaire shall be responsible for maintaining the premises used in performing this Agreement, and shall replace or reimburse City for any damage to or misuse of any of City's Equipment used by the Concessionaire.
  - i. To enable the Concessionaire to operate within the requirements hereunder and in consideration hereof the City shall permit the Concessionaire to use all Furniture, Fixtures and Equipment (FF&E) as set forth in Exhibit "A" hereto.
  - ii. All repairs and replacements to the FF&E shall be made by the Concessionaire. However, as to items replaced and owned by the Concessionaire those items will remain the property of the Concessionaire. All property owned by the Concessionaire shall be set forth (and timely updated) on Concessionaire's Property List, Exhibit "B" attached hereto. The City shall have no responsibility to insure the items on Exhibit "B".
  - iii. The City shall maintain plumbing, HVAC, wiring and electrical, roof, window panes and foundations of the Premises.
  - iv. The City shall have the right to lien the items on Exhibit "B".
- c. Concessionaire may be required to extend or modify operations in respect to the License at the request of City when such adjustments are

determined to be in the best interests of the City. Any such determinations shall be at the sole discretion of City.

- d. The Concessionaire shall be directly responsible to City for the operation of the Premises under the License and under this Agreement. Concessionaire, its employees, agents, and all other persons involved in activities related to this Agreement shall comply with and adhere to all the laws, rules and regulations of the State of Arizona governing the purchase, handling, inventory control, sale and service of spirituous liquor.
- e. It shall be the exclusive responsibility of Concessionaire to insure that all employees, agents and other persons engaging in activities which are the subject matter of this Agreement are fully advised and aware of any and all laws, rules and regulations relating to the purchase, handling, inventory control, sale and service of spirituous liquors. To that end, all employees of the Concessionaire shall have basic liquor training provided by a trainer approved by the Arizona Department of Liquor Licenses and Control and all managers of the Concessionaire shall have basic and management training from a like trainer. Certificates of Liquor Training shall be available for inspection at all times by the City.

- 6. <u>Insurance</u>. During the term of this Agreement the Concessionaire shall, at Concessionaire's expense, obtain and keep in force a policy covering Commercial Comprehensive Public Liability Insurance, Liquor Liability and Property Damage Insurance insuring Concessionaire against any liability arising out of the use, occupancy, or maintenance of the Premises and all areas appurtenant thereto. Failure

to obtain and maintain such insurance shall be a material breach hereunder. Such liability insurance shall be in the single limit amount of not less than \$1,000,000.0 per occurrence and \$2,000,000.00 (two Million and no/100) aggregate, unless otherwise agreed upon by the City, in the City's sole discretion. Said insurance shall have a Protective Liability endorsement attached thereto in favor of the City. If Concessionaire shall fail to produce and maintain said insurance, the City may, but shall not be required to, procure and maintain the same at the expense of the Concessionaire and Concessionaire shall upon demand pay said premiums for the policy or policies. Concessionaire shall provide the City with copies of the respective policies and certificates of compliance from the insurer upon request of the City. Failure to provide such copies upon the City's request shall be a material breach hereunder. The City is under no obligation to procure the least expensive insurance in the event the City obtains insurance as a result of Concessionaire's breach.

- b. <u>Insurance Policies</u>: Insurance required hereunder shall be in companies rated A or better in "Best's Insurance Guide." Concessionaire shall deliver to the City copies of policies of liability insurance required hereunder. No such policy shall be cancelable or subject to reduction of coverage or other modification except after the expiration of such policies, or after thirty (30) days written notice to the City of cancellation. Concessionaire shall furnish the City with renewals or "binders" of the insurance. After notice to the Concessionaire, should Concessionaire fail to replace such coverage, the City may order such insurance and charge the cost thereof to Concessionaire. Concessionaire shall not do or permit to be done anything which shall invalidate the insurance policies referred to herein. Concessionaire shall cause the City to be a named additional insured and loss payee on any policy which Concessionaire is required to maintain under the terms of this Lease.
- c. <u>Waiver of Subrogation</u>: Concessionaire hereby waives any and all rights of recovery against the City, or against the officers, employees, agents, and representatives of the City, for loss of or damage to such waiving party or its property or the property of others under its control, where

such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Concessionaire, upon obtaining the policies of insurance required hereunder, shall give notice to the insurance carrier that the foregoing waiver of subrogation is contained in this Agreement.

- 7. <u>City Use of Premises</u>: The City shall have the right to use the Premises without charge for City events so long as such use by the City does not conflict with the Concessionaire's use of the Premises.
- 8. <u>Sale by the City</u>. In the event the City sells the Premises to any private third party this Agreement shall automatically terminate. The City shall give reasonable notice to the Concessionaire in the event of any such sale.
- 9. <u>Utilities</u>. All utilities such as electrical, water, phone, and waste removal (grease removal); sewer, cable and gas shall be held in the name of the Concessionaire and shall be paid each month in full by Concessionaire.
- 10. No Liens: The Concessionaire shall keep the Premises free and clear of any material man's lien(s) or encumbrances of any sort. The Concessionaire shall immediately notify the City in the event any such lien or encumbrance, whether directly or indirectly created by the Concessionaire, that may attach to the Premises during the term hereof and the Concessionaire shall immediately remove such lien or encumbrance. The City may, but shall not be obligated to, pay to discharge such lien or encumbrance and the costs thereof along with attorney's fees and penalties shall be paid upon demand by the Concessionaire to the City.
- 11. <u>City Access to Premises</u>: The City reserves the right to access the Premises with reasonable notice to the Concessionaire for the purposes of health and safety inspections, performing the City's law and regulatory duties, administering the Premises as needed and enforcing this Agreement. The Concessionaire shall implement corrective measures upon notice from the City of any health or safety issues arising from such inspections.
- 12. <u>Naming the Premises</u>: At all times hereunder the City shall have the right to name the Premises or any interior or exterior spaces thereon.

- Hold Harmless Provisions. Concessionaire does hereby covenant and agree to pay, defend, indemnify and hold harmless City, its mayor and city council, appointed boards and commissions, officials, officers and employees, individually and collectively, from all fines, suits, claims, demands, actions of any kind and nature by reason of any and all of its operations under this Concession Agreement. The Concessionaire assumes all the risks in the operation of its business hereunder, and shall be solely responsible and answerable for any and all damage, accidents and injuries to persons or property without regard to the limits of liability insurance coverage require above. Concessionaire shall, at all times, be an independent operator and shall not, at any time, act or purport to act as an agent of City, or any of its officers or agents, except to purchase alcoholic beverages pursuant to the License.
- 14. <u>Laws and Ordinances</u>. Concessionaire shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of the services. Concessionaire shall keep fully informed of all existing and future federal, state and local laws, ordinances and regulations which, in any manner, affect the fulfillment of the Agreement and comply with the same.
- 15. <u>Assignment</u>. This Agreement is personal to Concessionaire and is not assignable without first obtaining the City's written consent, which shall be in the City's sole discretion.

### 16. Default; termination.

- a. In the event that the Concessionaire fails to render services of proper quality under the terms of this Concession Agreement; or has failed to perform, keep and observe any of the terms, covenants or conditions of the Concession Agreement, the failure shall constitute an event of default ("Event of Default"). The existence of an Event of Default shall be solely determined by the City.
- b. The City may give Concessionaire written notice to correct or cure the Event of Default. In the event that any Event of Default shall continue for ten (10) calendar days after said written notice is given, then the City may terminate this Concession Agreement and the Concessionaire shall have no further rights under it.

c. Both parties shall have all rights and remedies in law and in equity to address the breach of the other party.

### 17. Cancellation.

- a. In the event of any violation of any law, rule, or regulation, relating to the purchase, handling, inventory control, sale and service of spirituous liquor, by an office, employee or agent of the Concessionaire, the City shall have the right to cancel this Concessionaire Agreement immediately and without prior notice.
- b. The City, when in its sole discretion believes that the public interest would be best served by the cancellation of this Concession Agreement; it may cancel this Agreement upon sixty (60) days written notice. Any cancellation of this Agreement shall not be a breach by the City and the City shall have no liability of any kind to Concessionaire in the event of cancellation.
- c. Upon this termination or cancellation of the Management Services Agreement between the parties, this Concession Agreement shall be automatically cancelled.
- 18. <u>Substitute concessionaire; transition</u>. In the event of any termination or cancellation of this Concession Agreement, the City, or its duly authorized representative, may employ other parties to perform the responsibilities previously performed by the Concessionaire. The Concessionaire shall assist the City and any successor concessionaire in the orderly transfer of the operation.
- 19. <u>Notice</u>. Any notice, demand or communication ("Notice") required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or if sent by registered or certified mail, postage prepaid, addressed to the party at the respective address set forth below:

a. To the City: City of Douglas

Mr. Curtis Shook City Manager 425 10<sup>th</sup> Street

Douglas, Arizona 85607

b.	To Concessionaire:

- c. Any Notice that is personally delivered shall be deemed given upon the date of delivery. Any Notice that is mailed shall be deemed to be given three (3) days after the deposit of same into the United States mail as provided above. Either party may change its respective address by giving Notice of such change to the other party.
- 20. <u>Non-waiver Provisions</u>. No waiver or default by City of any of the terms, covenants or conditions hereof to be performed, kept or observed by Concessionaire shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained.
- 21. <u>Independent Contractor</u>. In carrying out its obligations under this Agreement, Concessionaire is and shall, at all times, be acting as an independent contractor, and all persons employed by Concessionaire, either directly or indirectly, shall be considered employees of Concessionaire and not employees of City.
- 22. <u>Entire Agreement</u>. This Concession Agreement contains the entire agreement between Concessionaire and City relating to operating as a Concessionaire under the License. It may be changed only by a written amendment, signed by the parties.
- 23. <u>Attorneys Fees</u>: In the event of a dispute arising out of the terms hereunder resulting in the filing of a lawsuit by either party, the prevailing party shall be awarded reasonable attorneys' fees in addition to court costs and other costs incidental thereto.

- 24. <u>Conflict of Interest</u>. No City employee of officer shall have direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement that is prohibited by law.
- 25. <u>No Discrimination</u>. No person shall be excluded from participation, denied the benefits of nor be subjected to discrimination in the use of the Premises on the basis of age, sex, religion, race, national origin, color or disability.
- 26. <u>Counterparts</u>. This Agreement may be executed in several counterparts, and sent by facsimile transmission, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signature pages and all of such counterpart signature pages shall be read as though one and they shall have the same force and effect as though all the signers had signed a single signature page.
- 27. <u>Authority</u>. Each party represents by signing this Agreement that they have the authority to enter into the same and binds each and every party, their heirs, successors, assigns, fellow beneficiaries in trust and/or partners, to the terms and conditions as herein set forth.

### 28. Concessionaire's Compliance:

- a. Concessionaire represents and warrants that it is in compliance with Federal Immigration Laws and Regulations. Concessionaire warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A. Concessionaire acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City shall have and does retain the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.
- b. Concessionaire is a validly formed business entity in the state of Arizona and is registered with the Arizona Corporation Commission, and as such

will comply with statutory requirements as set forth by state statute relating to Worker's Compensation and Employers Liability.

- c. The Concessionaire has at least three (3) years experience in the food and beverage industry in Arizona.
- 29. <u>Partial Invalidity</u>. In the event any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the fact that such term, covenant, condition, provision or agreement is invalid, void or otherwise unenforceable shall in no way affect the validity or enforceability of any other term, covenant, provision or agreement herein contained
- 30. <u>Interpretation of Terms.</u> Each of the parties have been represented by counsel of their own choosing in connection with the negotiation, preparation and drafting of the provisions of this Agreement, all exhibits hereto and all other documents executed in connection herewith and, consequently, all of the parties hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation of this Agreement, all exhibits hereto and such other documents and instruments including, without limitation, any rule of law to the effect that ambiguous or conflicting provisions contained in the final written form of this Agreement, all exhibits hereto and such other documents and instruments shall be interpreted or construed against the party who, or whose attorney, prepared the last draft thereof. In other words ambiguities shall not be construed against the drafter but parole and extrinsic evidence shall not be barred.

SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first
above written.
Concessionaire:
President/Chief Executive Officer
CITY OF DOUGLAS, an Arizona municipal corporation
CITY OF BOOGLAS, all Arizona municipal corporation
ATTEST:
Mayor
City Clerk
APPROVED AS TO FORM:
Juan Flores
City Attorney